IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 4773 of 2003()

CC.1126/2001 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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PETITIONER: ACCUSED NO.2

ALBIN S/O. YOHANNAN,
VAREEHANAZHIKATHU VEEDU, KUREEPUZHA,
PERINAD, KOLLAM.

BY ADV. SRI.N.K.MOHANLAL
SRI.VINEETH KOMALACHANDRAN

RESPONDENTS: COMPLAINANT NO.1

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1. PUSHPANGATHAN, AYYAPPA DADANAM,
KUREEPUZHA, PERINADU, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SIR.S.U. NAZAR
SRI.V.S.CHANDRASEKHARAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.4773 OF 2003

Dated this the 8th day of June, 2007

ORDER

The petitioner is the 2nd accused in a prosecution under Sec.138 of the Negotiable Instruments Act. His wife is the 1st accused. The case of the complainant is that a cheque drawn on a joint account of the petitioner and his wife which was signed by them jointly was dishonoured by the bank. The matter has reached the stage of trial. It is at the defence stage. The petitioner at this stage has come to this Court with a prayer that the complaint may be quashed invoking the powers under Sec.482 of the Cr.P.C.

2. What is the reason? The learned counsel for the petitioner submits that the petitioner is not an account holder or a joint account holder. He has been unnecessarily arrayed as a party in the complaint. Except the assertions made, there is nothing to substantiate the said contention.

Annexure-A2 produced shows that the 1st accused is the Proprietrix. It does not show that it is not a joint account or that both the accused have not signed the cheque.

3. In these circumstances, sufficient material to justify the quashing of the proceedings is not made available to this Court at all. This Crl.M.C. must, in these circumstances, meet its inevitable fate – dismissal.

4. I may hasten to observe that I have not intended to express any opinion on merits about the acceptability of the contention of the petitioner that he is not a joint account holder or even an account holder. I only intend to hold that sufficient materials are not made available before this Court to justify resort to the jurisdiction under Sec.482 of the Cr.P.C. in favour of the petitioner. The petitioner shall be entitled to raise all his contentions, including that contention before the learned Magistrate. I note that to consider the above innocuous contention, the matter has been remaining on the file of this Court from 2003. For various reasons this Court could not dispose of the same earlier. I direct that the learned Magistrate must now dispose of the case as expeditiously as possible – at

any rate, within a period of 45 days from the date on which a copy of this order is placed before the learned Magistrate.

4. Issue a copy of this order to the learned counsel for the respondent (complainant) for production before the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge